

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JOHN H. BENGE, JR.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 05-550-GMS
	:	
RICK KEARNEY , Warden,	:	
and M. JANE BRADY ,	:	
Attorney General of the	:	
State of Delaware	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, the respondents move for an extension of time in which to file an answer to the petition. In support thereof, the respondents state the following:

1. The petitioner, John H. Benge, has applied for federal habeas relief challenging a conviction following a guilty plea in the Delaware Superior Court in and for New Castle County of two counts of third degree burglary, three counts of unlawful interception of communications (wiretapping), and attempted wiretapping. D.I. 1; *Benge v. State*, No. 137, 2004, 2004 WL 2743431 (Del. Nov. 12, 2004). By the terms of the Court's order, the answer is due to be filed on November 28, 2005.

2. Due to case load and various other matters, undersigned counsel needs additional time to prepare and file an answer to the petition. Counsel has submitted various filings in this Court and in the state courts over the course of the last month and also participated in argument in a capital case pending on appeal in the Third Circuit. Counsel

also notes that this case is proceeding in tandem with another case filed by this petitioner challenging a separate conviction (Civ. Act. No. 05-551-GMS) and that counsel was unable to schedule obtaining and having certified the state supreme court documents from Dover in connection with this proceeding until next week. Counsel notes both cases share the same due date and that counsel intends on filing the two answers on the same date. Because of work load, counsel thus requests the additional time to prepare the answer in this case.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is the respondents' first request for an extension of time in this case. The requested extension will not result in any prejudice to the petitioner.

5. In light of the above, the respondents submit that a one-month extension of time from to and including December 28, 2005 is reasonable.

/s/

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Date: November 28, 2005

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RICK KEARNEY , Warden,	:	
and M. JANE BRADY ,	:	
Attorney General of the	:	
State of Delaware	:	
	:	
Respondents.	:	

ORDER

This _____ day of _____, 2005,

WHEREAS, respondents having requested an extension of time in which to file an answer to the petition for a writ of habeas corpus, and

WHEREAS, it appearing to the Court that the request is timely and good cause has been shown for the extension,

IT IS HEREBY ORDERED that respondents' answer shall be filed on or before December 28, 2005.

United States District Judge

CERTIFICATE

I hereby certify that I have neither sought nor obtained the consent of the petitioner, who is incarcerated and appearing *pro se*, to the subject matter of this motion.

/s/
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: December 28, 2005

CERTIFICATE OF SERVICE

The undersigned, being a member of the Bar of this Court, hereby certifies that on November 28, 2005 he caused to be electronically filed a Motion for Extension of Time with the Clerk of the Court using CM/ECF. I hereby certify that on November 28, 2005 I have also caused to be mailed by first class U.S. Mail two copies of the document to the following non-registered participant, the petitioner:

John H. Bengé (No. 494395)
Sussex Correctional Institute
P.O. Box 500
Georgetown, DE 19947.

/s/
Thomas E. Brown
Deputy Attorney General
Del. Dept. of Justice

Counsel for Respondents

Date: November 28, 2005